

CITY OF VENTURA
CITY ATTORNEY

PUBLIC SESSION REPORT OF CLOSED SESSION

ITEM

September 9, 2019

MATTER: Significant Exposure to Litigation [Government Code §54956.9(d)(2)]

The following closed session report is being issued pursuant to Government Code §54957.1(a)(3)(B):

In March, 2019, the City received information from the attorneys for an individual alleging that in 2011, at which time the individual was a minor, a City employee, while on duty, participated in an inappropriate relationship with the individual and that the individual intended to file a lawsuit against the City regarding this allegation and related issues. After additional information was received and reviewed by the City regarding these allegations, and research conducted regarding applicable statutes of limitation, on June 24, 2019, the City Council, pursuant to Government Code §54956.9, conducted a closed session regarding this matter, authorizing its settlement by a unanimous vote of the City Council with all members present. A formal settlement agreement was signed by the individual and her counsel on August 8, 2019 in which they accepted the sum of \$650,000 to resolve this matter in its entirety. A redacted copy of the Settlement Agreement & Release of All Claims will be available for review in the City Clerk's Office tomorrow during normal business hours.

SETTLEMENT AGREEMENT & RELEASE OF ALL CLAIMS

In consideration of the promises made herein, [REDACTED], hereby agrees as follows:

Recitals

1.1 [REDACTED] contends that she has sustained damage arising out of a series of alleged occurrences beginning in or about June, 2011 involving several current and former City of San Buenaventura ["CITY"] employees, including, but not limited to, [REDACTED]

[REDACTED], for which the CITY is allegedly liable. CITY denies any such liability or that [REDACTED] has incurred any such damage. [REDACTED] and CITY desire to resolve any and all claims [REDACTED] has, had, may have or will have against the CITY and the above referenced present and former CITY employees as well as all other CITY employees, representatives and related entities, and it is [REDACTED]'s intent to resolve any and all such claims or related claims through this Agreement.

1.2 The "alleged occurrences" referenced above in paragraph 1.1 include, but are not limited to:

(A) Any and all contacts between [REDACTED], whether they be of a sexual or other nature,

(B) Any and all contacts between [REDACTED] including, but not limited to, his alleged failure to report his knowledge of [REDACTED] and [REDACTED]'s alleged sexual relationship to appropriate authorities,

(C) Any and all conduct, or failure to act, by the CITY and the Ventura Police Department with respect to an alleged sexual relationship between [REDACTED]

(D) Any alleged effort by the CITY, including, but not limited to, [REDACTED], to influence [REDACTED] and her family members, including, but not limited to, [REDACTED], from discussing the alleged conduct, or failure to act, referenced above in paragraph 1.2 (A), (B) and (C).

(E) [REDACTED]

(F) Any conduct or failure to act related to or emanating from the above allegations in paragraphs 1.2(A)-(E).

Release

2.1 (A) For good and valid consideration, in the sum of six hundred fifty thousand dollars (\$650,000.00), to be paid as described in paragraph 3.1 of this Agreement, [REDACTED] hereby forever generally and completely releases and discharges (a) the CITY, (b) the City Councils of the City of San Buenaventura, (c) the CITY's former, present and future commissions, boards, attorneys, insurers, investigators, consultants, vendors, servants, representatives, successors and assigns, and their related or affiliated entities, and (d) all other persons and organizations (whether private or public), of and from any and all claims and demands of every kind and nature, in law, equity or otherwise, known or unknown, suspected or unsuspected, disclosed or undisclosed, asserted or not asserted for any reason whatsoever, for damages, actual and consequential (including, but not limited to, economic, non-economic and punitive), past, present and future, including, but not limited to, tort, statutory, constitutional, contractual and extra-contractual claims, arising out of or in any way related to the alleged claims referenced in paragraph 1.1 and the alleged occurrences referred to in paragraph 1.2 of this Agreement,

including all things which were, may have been or can be asserted by way of claims, complaints, administrative actions, arbitration, lawsuits or other legal action.

(B) For good and valid consideration, that being a mutual waiver of liability, fees and costs, [REDACTED] hereby forever generally and completely releases and discharges the CITY's former, present and future officers, agents and employees [including, but not limited to, [REDACTED] [REDACTED], of and from any and all claims and demands of every kind and nature, in law, equity or otherwise, known or unknown, suspected or unsuspected, disclosed or undisclosed, asserted or not asserted for any reason whatsoever, for damages, actual and consequential (including, but not limited to, economic, non-economic and punitive), past, present and future, including, but not limited to, tort, statutory, constitutional, contractual and extra-contractual claims, arising out of or in any way related to the alleged claims referenced in paragraph 1.1 and the alleged occurrences referred to in paragraph 1.2 of this Agreement, including all things which were, may have been or can be asserted by way of claims, complaints, administrative actions, arbitration, lawsuits or other legal action.

(C) As further consideration for payment of said sums and mutual waivers of liability, [REDACTED] hereby agrees to indemnify, defend and hold harmless (a) the CITY, (b) the City Councils of the City of San Buenaventura, (c) the CITY's former, present and future officers, agents, employees [including, but not limited to [REDACTED] [REDACTED], commissions, boards, attorneys, insurers, investigators, consultants, vendors, servants, representatives, successors and assigns, and their related or affiliated entities, and (d) all other persons and organizations (whether private or public) against any action, claim or demand by any other person(s) or organizations, for damages or compensation resulting in any way from the alleged claims described in paragraph 1.1 and the alleged occurrences referred to in paragraph 1.2 of this Agreement. This includes, but is not limited to, any and all healthcare provider and healthcare insurer liens and claims, whether they be from private health insurers or public entities.

Settlement Payment Terms

3.1 (A) Payment of the settlement amount noted above in paragraph 2.1(A) of this Agreement shall be made within thirty days of actual delivery of this fully signed Agreement and a W-9 Form completed by [REDACTED]'s attorneys to the CITY.

(B) [REDACTED] directs that the payment noted above in paragraph 3.1(A) is to be made payable to "Bamieh & De Smeth Client Trust Account" in care of [REDACTED], and shall be transmitted to Bamieh & DeSmeth PLC. [REDACTED] hereby agrees to indemnify, defend and hold harmless (a) the CITY, (b) the City Councils of the City of San Buenaventura, (c) the CITY's former, present and future officers, agents, employees [including, but not limited to [REDACTED] [REDACTED], commissions, boards, attorneys, insurers, investigators, consultants, vendors, servants, representatives, successors and assigns, their related or affiliated entities, and (d) all other persons and organizations (whether private or public) against any action, claim or demand with respect to any and all disputes arising between [REDACTED] and her attorneys regarding the distribution of this payment.

Legal Action

4.1 [REDACTED] hereby represents that (a) she has initiated no legal action in any court or

other forum with respect to the alleged claims referenced in paragraph 1.1 and the alleged occurrences referred to in paragraph 1.2 of this Agreement and (b) will not initiate any legal action in any court or other forum with respect to alleged claims referenced in paragraph 1.1 and the alleged occurrences referred to in paragraph 1.2 of this Agreement.

No Admission of Liability

5.1 It is understood and agreed that this settlement is the compromise of a doubtful and disputed claim, and that the payment made is not to be construed as an admission of liability on the part of the parties hereby released, and that said parties deny liability therefore, and intend merely to avoid litigation and buy their peace.

Waivers

6.1. It is understood and agreed that all rights under Section 1542 of Civil Code of California and any similar law of any state or territory of the United States are hereby expressly waived. Said section reads as follows:

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party"

Declarations and Representations

7.1 [REDACTED] hereby declares and represents that in executing this Agreement, she has relied on legal advice from her attorney, that the terms of this Agreement have been explained, and that she fully understands the terms of this Agreement.

7.2 [REDACTED] hereby declares and represents that the damages she has allegedly sustained are or may be permanent and progressive, and in making this Agreement it is understood and agreed that the undersigneds rely wholly upon the undersigneds' judgment, belief and knowledge of the nature, extent, effect and duration of said damages and liability therefor and is made without reliance upon any statement or representation by (a) the CITY, (b) the City Councils of the City of San Buenaventura, (c) the CITY's former, present and future officers, agents, employees [including, but not limited to [REDACTED]

[REDACTED], commissions, boards, attorneys, insurers, investigators, consultants, vendors, servants, representatives, successors and assigns, their related or affiliated entities, and (d) all other persons and organizations (whether private or public).

7.3 [REDACTED] hereby declares and represents that no promise, inducement or agreement not herein expressed has been made to her, and that her execution of this Agreement is free and voluntary.

7.4 [REDACTED] hereby declares and represents that there are no liens or claims of lien or assignments in law or equity or otherwise of or against any of the claims or causes of action released herein and, further, that the undersigned is fully entitled and duly authorized to give this complete and final general release and discharge.

7.5 [REDACTED] hereby declares and represents that she has no knowledge of Medicare, Medicaid, MediCal or any other government or quasi-government entity having a lien with

respect to any medical bills [REDACTED] has allegedly incurred as a result of the alleged claims referenced in paragraph 1.1 and the alleged occurrences referred to in paragraph 1.2 of this Agreement. If any such liens exist, they are the sole responsibility of [REDACTED].

Binding Agreement

8.1 [REDACTED] understands and expressly agrees that this Agreement shall be binding on her former, present and future spouse(s), children, heirs, agents, attorneys, representatives, assigns, administrators and executors, and inure to the benefit of CITY, the City Council of the City of San Buenaventura, CITY's officers, agents, employees, commissions, boards, attorneys, insurers, investigators, consultants, vendors, servants, representatives, successors and assigns, their related or affiliated entities, and all business entities (i.e., corporations, companies, not-for-profit entities, partnerships, etc.), educational institutions and public entities.

Fees and Costs

9.1 [REDACTED] will bear her own costs, expenses and attorneys' fees, whether taxable or otherwise, incurred in or arising out of or in any way related to the matters released by this Agreement, whether based on statute, regulation, ordinance or agreement.

Interpretation of Agreement

10.1 This Agreement shall be deemed to have been entered into and shall be construed and enforced in accordance with the laws of the State of California as applied to contracts made and to be performed entirely within California.

10.2 This Agreement shall be construed without regard as to who drafted it and shall be interpreted as though all parties hereto participated equally in the drafting of this Agreement.

10.3 Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but if any provision of this Agreement shall be invalid or prohibited thereunder, such provision shall be ineffective to the extent of such prohibition without invalidating the remainder of such provision or the remaining provisions of this Agreement.

10.4 This Agreement constitutes a single, integrated contract expressing the entire agreement of the parties hereto. There are no other agreements, written or oral, express or implied, between the parties hereto, concerning the subject matter hereof, except the agreements set forth herein.

10.5 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. CITY shall maintain custody of all originals but shall allow any person signing this Agreement to have reasonable access to the original of this document upon reasonable request.

Confidentiality¹

11.1 (A) [REDACTED] and her attorneys (including, but not limited to, themselves and their staffs, experts, agents and consultants) shall keep confidential the existence and terms of

¹ This provision of the Agreement does not apply to the City of San Buenaventura, as it is subject to the California Public Records Act and various other disclosure laws.

this Agreement. In particular, [REDACTED] and her attorneys (including, but not limited to, themselves and their staffs, experts, agents and consultants) shall not disclose the existence or terms of this Agreement to anyone or anything, including, but not limited to, the media (i.e., newspapers, magazines, television, radio, internet, etc.), persons, business entities, public entities or another organizations, except as required by law or to disclose necessary information to their accountants.

(B) [REDACTED] and her attorneys (including, but not limited to, themselves and their staffs, experts, agents and consultants) shall keep confidential the alleged claims and occurrences as referenced above in paragraphs 1.1 and 1.2 from the media (i.e., newspapers, magazines, television, radio, internet, etc.), persons, business entities, public entities or another organizations, except as required by law and with respect to (1) each other, (2) mental health specialists, who are subject to privacy and confidentiality laws and regulations, for purposes of diagnosis and treatment, and (3) investigators on behalf of the CITY who investigate the alleged conduct, or failures to act, referenced above in paragraph 1.2.

(C) Within one week of receiving the settlement funds referenced in paragraphs 2.1 and 3.1 above, [REDACTED] will request in writing (see the attached Addendums) that [REDACTED] abide by the terms of paragraph 11.1(A) and (B) above. [REDACTED] will provide the CITY with written confirmation of compliance with this provision within one week thereafter.

Investigation

12.1 (A) [REDACTED] will cooperate with investigators on behalf of the CITY who investigate the alleged conduct, or failures to act, referenced above in paragraph 1.2, including, but not limited to, being interviewed by said investigators.

(B) Within one week of receiving the settlement funds referenced in paragraphs 2.1 and 3.1 above, [REDACTED] will request in writing (see the attached Addendums) that [REDACTED] cooperate with investigators on behalf of the CITY who investigate the alleged conduct, or failures to act, referenced above in paragraph 1.2, including, but not limited to, being interviewed by said investigators. [REDACTED] will provide the CITY with written confirmation of compliance with this provision within one week thereafter.

THE UNDERSIGNEDS HAVE READ THIS AGREEMENT AND FULLY UNDERSTAND IT

CAUTION: READ BEFORE SIGNING BELOW

[REDACTED] Dated: 8/8/19

Approved as to Form and Content, including the Confidentiality Provision:

Ron Bamieh

Dated: 8/8/19

Ron Bamieh

Bamieh & DeSmeth PLC

Attorneys for [REDACTED]